

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Amendment of Section 2.106 of the)	
Commission's Rules to Allocate)	ET Docket No. 95-18
Spectrum at 2 GHz for Use)	
by the Mobile-Satellite Service)	

ORDER

Adopted: November 4, 2003

Released: November 4, 2003

By the Chief, Office of Engineering and Technology:

1. By this Order, and effective immediately, we suspend for 9 days, until November 13, 2003, the expiration date for the initial two-year mandatory negotiation period for Phase 1 of the 2 GHz band relocation plan between Mobile-Satellite Service (MSS) and Broadcast Auxiliary Service (BAS) that was due to expire on November 4, 2003.¹ The mandatory negotiation period will continue to remain in effect for the duration of this suspension or until otherwise modified by Commission action.

2. This action affects the relocation procedures for 35 megahertz of spectrum, currently used by BAS licensees, in the 1990-2025 MHz band. In 1997, the Commission reallocated this spectrum for MSS, effective January 1, 2000.² In a *Second Report and Order and Second Memorandum Opinion and Order*, it adopted a relocation plan for incumbent licensees in these bands that requires MSS entrants to provide comparable facilities to BAS incumbents that are relocated prior to specified sunset dates.³ The BAS relocation plan provides for a two-phase relocation, each phase beginning with a two-year mandatory negotiation period.⁴ In the event that an agreement for relocation is not reached by the end of

¹ BAS spectrum in the 2 GHz band is also authorized for use by the Cable Television Relay Service (CARS) and the Local Television Transmission Service (LTTS). See 47 C.F.R. §§ 74.602, 78.18(a)(7), 21.901(b). As in previous actions in this proceeding, we will refer to these services collectively as BAS, and all proposals and decisions apply to CARS and LTTS in the band, as well as to BAS.

² Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 7388 (1997). To provide for paired MSS spectrum, an additional 35 megahertz of spectrum in the 2165-2200 MHz that is used by Fixed Service incumbents was also reallocated. This *Order* does not affect the relocation procedures for that band.

³ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 95-18, *Second Report and Order and Second Memorandum Opinion and Order*, 15 FCC Rcd 12315 at 12332 and 12341, ¶¶ 50 and 80 (2000), *recon. pending (Second Report and Order)*. See also 47 C.F.R. §§ 74.690(e)(1); 78.40(f)(1).

⁴ *Second Report and Order*, 15 FCC Rcd at 12338-39, ¶¶ 70-74. During "mandatory" negotiations, "an [incumbent] licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other that is reasonably required to facilitate the relocation process." See *id.*, 15 FCC Rcd at 12328, ¶ 38, citing 47 C.F.R. § 101.73.

a particular negotiation period, the MSS licensee(s) have the option of relocating BAS incumbents involuntarily.⁵ The two-year mandatory negotiation period for Phase 1 commenced upon Federal Register publication of the *Second Report and Order* on September 6, 2000, and was originally due to expire on September 6, 2002.⁶ This date has subsequently been extended until November 4, 2003.⁷

3. In the *Suspension Order*, the Commission concluded that it did not appear that it would be able to resolve the outstanding issues relating to use of the 2 GHz MSS band prior to expiration of the mandatory negotiation period. It further concluded that it would serve the public interest to continue mandatory negotiations until it was able to address these relocation matters, and so the Commission suspended the expiration of the initial negotiation period for one year.⁸

4. In a *Third Report and Order*, *Third Notice of Proposed Rulemaking*, and *Second Memorandum Opinion and Order* in ET Docket No. 00-258 adopted earlier this year, the Commission reallocated a portion of the 2 GHz MSS spectrum in order to provide for new Fixed and Mobile services, including Advanced Wireless Services (AWS).⁹ In a *Report and Order and Notice of Proposed Rulemaking* in IB Docket No. 01-185, it also permitted MSS licensees to provide ancillary terrestrial component (ATC) operations in the 2 GHz MSS band.¹⁰ In adopting the *Suspension Extension Order*, we noted that the Commission has not modified the existing BAS relocation rules for the 1990-2025 MHz band as may be necessary to reflect these decisions, stated that considerations that led the Commission to adopt the *Suspension Order* continue to apply with respect to the scheduled expiration date for the mandatory BAS negotiation period, and found that it was in the public interest to continue the mandatory negotiation period until the Commission addressed the outstanding relocation issues.¹¹ Thus, we extended the expiration of the mandatory negotiation period until November 4, 2003.

5. As of today, the Commission is still considering what modifications to the BAS relocation procedures may be necessary in light of the developments in the band, including the adoption of the *AWS Third R&O* and the *ATC Report and Order*. Accordingly, we find that it continues to serve the public interest to extend the mandatory negotiating period until the Commission addresses outstanding relocation issues in the band, and that the interests addressed in the *Suspension Order* and the *Suspension*

⁵ *Id.*, 15 FCC Rcd at 12331, ¶ 48.

⁶ *Id.*, 15 FCC Rcd at 12339, ¶ 72. Phase 2 of the BAS relocation plan is not triggered until Phase 1 spectrum is no longer sufficient to meet MSS requirements. *Second Report and Order*, 15 FCC Rcd at 12326, ¶ 30.

⁷ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, *Order*, 17 FCC Rcd 15141 (2002) (extending the expiration date to September 6, 2003) (*Suspension Order*); *Order*, 18 FCC Rcd 18353 (2003) (extending the expiration date to November 4, 2003) (*Suspension Extension Order*).

⁸ *Suspension Order*, 17 FCC Rcd at 15143, ¶ 5.

⁹ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Third Report and Order*, *Third Notice of Proposed Rulemaking*, and *Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003), *recon. pending* (*AWS Third R&O*).

¹⁰ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962 (2003), *Errata* (rel. March 7, 2003) (*ATC Report and Order*), *recon. and appeal pending*, AT&T Wireless Services, Inc. and Cellco Partnership d/b/a Verizon Wireless v. FCC, No. 03-1191 (D.C. Cir. filed July 8, 2003); *Order on Reconsideration*, IB Docket No. 01-185, 18 FCC Rcd 13590 (2003) (*ATC Sua Sponte Recon*).

¹¹ *Suspension Extension Order*, 18 FCC Rcd at 18355, ¶ 5.

Extension Order continue to apply. We therefore suspend effective immediately upon release of this order, expiration of the initial Phase 1, two-year mandatory BAS negotiation period for 9 days, until November 13, 2003.¹² We retain the option to shorten or lengthen this suspension as circumstances warrant.¹³ We also emphasize that the action taken herein is interim in nature and does not prejudice further action in other proceedings. For the duration of this suspension, all other aspects of the initial mandatory BAS negotiation period will continue in force and, as a consequence, BAS incumbents will not be subject to involuntary relocation by MSS licensees. For the duration of the suspension, we likewise require MSS and BAS licensees to comply with all negotiation requirements and procedures adopted in the *Second Report and Order* that are applicable to the initial BAS mandatory negotiation period.

6. Authority for issuance of this Order is contained in Sections 4(i), 5(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 303(f), and 303(r), and Section 553(d) of the Administrative Procedure Act, 5 U.S.C. § 553(d). This action is taken under delegated authority, pursuant to sections 0.31(m) and 0.241(a) of the Commission's Rules, 47 C.F.R. §§ 0.31(m) and 0.241(a).

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f), and 303(r), Section 553(d) of the Administrative Procedure Act, 5 U.S.C. § 553(d), and sections 0.31(m) and 0.241(a) of the Commission's Rules, 47 C.F.R. §§ 0.31(m) and 0.241(a), the expiration date of September 6, 2002, for the initial two-year mandatory BAS negotiation period for Phase 1 set forth in the *Second Report and Order* in ET Docket No. 95-18 IS HEREBY SUSPENDED, effective immediately upon release of this order, until November 13, 2003, consistent with the terms discussed above.

FEDERAL COMMUNICATIONS COMMISSION

Edmond J. Thomas
Chief
Office of Engineering and Technology

¹² We are making this Order effective immediately because the mandatory negotiation period is set to expire today. We have taken similar action in the past to immediately suspend the effect of a rule pending the resolution of issues being considered in other rule makings. *See, e.g.,* Suspension Order; Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, *Order*, 16 FCC Rcd 22310 (2001).

¹³ *See Suspension Order*, 17 FCC Rcd at 15143, ¶ 5.